DOCUMENT RESUME

ED 121 648 SO 009 003

AUTHOR	Gardner, John W.
TITLE	Citizen Action Can Turn Things Around.
INSTITUTION	National Education Association, Washington, D.C.
PUB DATE	75
NOTE	16p.
AVAILABLE FROM	NEA Publications, Order Department, The Academic Building, Saw Mill Road, West Haven, Connecticut 06516 (Stock No. 0948-7-00, $0.50)
EDRS PRICE	MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS	*Citizen Participation; Citizenship Responsibility; Constitutional Law; Democratic Values; *Federal Government; *Government Role; Opinions; Political Attitudes; *Political Power; *Politics; Power Structure; United States History
IDENTIFIERS	*Common Cause

ABSTRACT

In this document, the author points out that Americans have lost confidence in the government and political processes and shows how Common Cause can help restore trust in our institutions. Over the years, since the signing of the Constitution, Americans have believed that their political system was one in which they had a voice and that the system could be made to work. Recently, however, the opinion of the American people changed. The notion of self-government was replaced by the concept of federal government because the nation had become too big and too complex, resulting in less understanding and desire by individuals to participate in the process of government. To restore confidence and trust in governmental institutions, it is necessary to build a political and governmental process that is open, accountable, and unbought--a political and governmental process in which citizens can believe and place their trust. The overall goal is to preserve the constitutional system and constitutional liberty. Before that happens, however, some basic problems need to be overcome. It is necessary to build both a strong presidency and executive branch and, at the same time, strengthen the instruments which hold them accountable. The most important problem is providing protection against abuse of governmental power. A strengthened role for organizations such as Common Cause can be used as a check against abuses of power. Common Cause can reestablish the link of accountability between citizens and their elected representatives. (Author/JR)

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ED121648

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ABUSE OF POWER

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SP009003

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A National Education Association Publication

Citizen Action Can Turn Things Around

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By **JOHN W. GARDNER**
Chairman, Common Cause.

It was almost unbearably hot and humid in Philadelphia in the summer of 1787. When the delegates to the Constitutional Convention closed the windows of Independence Hall, they sweltered; when they opened them, they were distracted by street noises and pestered by flies.

There were 55 delegates to the Convention, but not many more than 30 attended any given meeting. The group was relatively young—Alexander Hamilton was 30; James Madison, 36; Jonathan Dayton, 26; Charles Pinckney, 29.

Toward the end of the Convention, the delegates submitted the agreed-upon articles to a committee on style. Committee member Gouverneur Morris was chosen to make a smooth draft of the new constitution. Two days later, when the committee reported out the document, it opened with one of the most surprising and powerful phrases in all our history—the seven words, "We, the people of the United States."

It isn't easy for us now to understand how surprising those words were. When the document went into the style committee, it began, "We, the people *of the States* of New Hampshire, Massachusetts . . ." (Italics mine.) That wording was better suited to a feeling that had grown swiftly in the 11 years since the writing of the Declaration of Independence—a feeling that each state was virtually a sovereign nation in its own right.

Bear in mind that during the war when George Washington tried to get his New Jersey troops to swear allegiance to the United States, they simply refused. "New Jersey is our country," they said.

Under the Articles of Confederation, each of the states had its

own tariff laws. New Jersey had its own customs service. Nine of the states had their own navies.

The surprising phrase, "We, the people of the United States," suggested a source of legitimacy and power that was larger than the sovereign states and inclusive of the states. The words struck an enormously responsive chord in the emotions of most Americans —and the phrase spread like wildfire across Europe. In the older countries, weary of autocrats, the words were incredible and spine-tingling.

Whatever the phrase may have meant to the drafters of the Constitution, and it probably did not mean for them precisely what it means for us, over the years it has come to signify for many Americans the very essence of self-government. It has come to stand for the fact that all the vast and weighty machinery of government, all the pomp and dominion of state, all the powers and principalities derive their legitimacy, ultimately, from the people.

For many years, Americans acted in the spirit of that phrase. In fact, Europeans marveled at the readiness of American citizens to get together to pursue any public issue of common interest.

Then in the middle years of this century, we almost lost the habit. We almost resigned ourselves to the idea that the phrase, "We, the people," really meant the federal government. The nation had become too big, too complex, and was changing too fast for individuals to understand or feel that they could participate.

We can restore the traditional confidence of Americans that they have a voice in the system and that the system can be made to work. But it won't be easy. Public opinion polls show a deep loss of confidence on the part of the

American people. Cynicism is replacing trust, and this is a profoundly dangerous circumstance.

How can we restore confidence in our institutions? What must we do?

Everyone is familiar with the list of substantive problems the nation faces—inflation, energy shortages, unemployment, international tensions, crime, racial conflict, and many more. But while we are tackling these problems—and we cannot run away from them—we must recognize that we will not solve any of them until we repair the instruments of self-government.

First we must build a political and governmental process that is open, accountable, and unbought, a political and governmental process that citizens can believe in and place their trust in.

The goal is large: to preserve our constitutional system and our constitutional liberty. In order to do this, we must deal with some concrete problems.

The Presidency and the Executive Branch have steadily accumulated power over the past 40 years, and in that same period, the power of Congress has waned. So we have heard demands for a seemingly simple remedy to our recent troubles: Weaken the Presidency; strengthen Congress. But ours is a huge and complex society in a swiftly changing and dangerous world. We can never again have a weak Presidency and Executive Branch. And Congress cannot play the leadership role alone.

We must accept the necessity for a strong Presidency and Executive Branch and at the same time create powerful instruments for calling them to account. Most of the needed instruments now exist but require strengthening.

We have no single protection against the abuse of power. We

cannot put our sole faith in a great leader (even if we could find one). We cannot rest all our hopes in a revitalized Congress. Or in new laws. The system of accountability toward which we must move will have to be woven of many strands.

Let me list the main ones.

Congress, of course, is the most versatile and significant check on the power of the Executive. It has a special importance for citizens because, of the three branches of our government, Congress is the accessible branch.

But if Congress is to play its role effectively, it must proceed further with the reform movement now under way. Of particular importance are the final steps it must take in abolishing secrecy as a way of life, in throwing off the albatross of the seniority system, and in gaining a grip on the budget process. The House of Representatives must take action to restructure committees and should institute the practice of rotating committee chairmen and committee assignments. And both houses must alter at once their improvident habit of handing powers over to the President in an emergency and then never reclaiming those powers.

Another constraint on the abuse of power, another element in the web of accountability, is the rule of law as undergirded by the Constitution. It is not a new idea. Cicero said, "We are in bondage to the law in order that we may be free." And Edmund Burke said, "The only liberty I mean is a liberty connected with order; that not only exists along with order and virtue, but which cannot exist at all without them."

Some people think a lot about law and order and do not spend much time thinking about freedom. Others think a lot about

freedom and do not spend much time thinking about the rule of law. Both kinds of people would do well to go back to our Constitution, which gives us our freedom inextricably embedded in a framework of law.

If ours is not a government of laws, if the Bill of Rights is a scrap of paper, then anyone of us may be the next victim. If we incur official displeasure or if some neighbor concludes that we do not think the right political thoughts, our mail may be opened, our telephone tapped, our houses broken into, and anyone we may have offended may be called to give secret testimony against us. Our protection against that possibility is the Constitution.

And while we are examining the rule of law, we had better remind ourselves that we can no longer afford a Department of Justice which is entangled with politics. All too often, in one Administration after another, the post of attorney general has gone to an individual whose chief distinction was deep involvement in the political wars. That must stop.

In addition, Congress should create an independent and permanent Office of Public Prosecutor which would deal only with charges involving official misconduct and violation of campaign or ethics laws. The conflict of roles and responsibilities that necessitated the appointment of a special prosecutor was not a result of the unique difficulties of the Nixon Administration. It is a conflict that is built into the structure of the Department of Justice, and it must be dealt with on a permanent basis.

The Executive Branch must have its own internal checks and balances, its own constraints on power, but these have diminished as the power that formerly resided in Cabinet departments has been

steadily shifted into the Executive Offices of the President.

Not only should Cabinet departments be restored to their former strength and Cabinet officers of stature be brought in to serve, but the vigor and dignity of the senior civil service should be reestablished. (In the recent attempt to use the Internal Revenue Service to harass the Administration's "enemies," the integrity of senior professionals in the Service played a major role in limiting the harassment effort.)

Of course, civil servants who manage government programs must themselves be held accountable in a variety of ways—through program evaluation, through redress-of-grievance procedures, and, most of all, through the requirement that they conduct the public business openly.

Among our most effective constraints on the abuse of power is, of course, the freedom of speech and of the press guaranteed in the First Amendment. Neither the newspapers and news magazines nor radio and television journalism should be regarded as above criticism, and I suspect that almost everyone has had occasion to indulge in such criticism.

I have been in public life for a number of years now, and I can assure you that everyone in public life has had occasion to be angry at the news media. Nevertheless, the media are the shield of our freedom, and we must preserve their freedom.

Less frequently discussed as a constraint on the abuse of power is the constitutional reservation of power to the states. The Constitution abounds in simple, powerful sentences, none more straightforward than the Tenth Amendment, which reads in its entirety: "The powers not delegated to the United States by the Constitution, nor

prohibited by it to the States, are reserved to the States respectively, or to the people."

In today's intricately organized society, allocation of powers among federal, state, and local levels of government is a complex process. But the states can continue to be—as originally intended—a constraint on the power of the central government, provided that the states themselves are not in decay. State government must be revitalized if it is to play its constitutional role.

Quite another sort of instrument of accountability is a soundly functioning electoral process and healthy political parties.

The most urgent requirement is, of course, a total overhaul of our system of campaign financing. Another urgent requirement is legislation to outlaw subversion of the electoral process through espionage and sabotage.

Along with such reforms must go a revitalization of the political parties. High-minded citizens who look down on politics are going to have to learn that we need politicians. Just as we must reject those who corrupt the public process, so we must support those politicians who risk their careers in the public interest.

In any society, it is inevitable that equally worthy groups want mutually incompatible things. Unless we want the whims of a dictator to settle such differences or unless we want to shoot it out, we will have to turn to the much-maligned arena of politics. Where else, how else can a free people settle their differences peaceably?

Still another constraint on power is citizen action of the sort represented by Common Cause, the citizen's lobby. In the mid-twentieth century, the long tradition of citizen action in this country began to fade. As the nation

grew vast, as the problems grew technical, as social organization grew complex, citizens could no longer imagine that they might have a significant impact.

But today the tradition of citizen action is being reborn. And now it has a new shape and tone. Citizen organizations have learned how to make their influence felt in a huge, complicated society. They have learned how to organize; they have developed the same competence and toughmindedness that characterizes the most effective special-interest lobbies.

The two chief obstacles to responsive government are the scandalous capacity of money to buy political outcomes and the bad habit of doing the public's business behind closed doors.

In 1970 when Common Cause was founded, we said that, given traditional campaign financing practices, the spectacular rise in campaign costs was going to corrupt our political system beyond repair.

We played a major role in getting a new campaign financing law in 1971. Then, with the help of 1,000 volunteers throughout the country, Common Cause monitored enforcement of the new law throughout the '72 campaign. We uncovered widespread violations. We filed complaints against 128 Democrats and 98 Republicans—but we evened that out somewhat by suing the Committee To Re-Elect the President. Through that suit we forced disclosure of the list of secret contributors to the Committee. And it was indeed quite a list.

Studying that list, one can learn quite a lot about the underground rivers of money that have flowed so strongly in American politics.

Everyone senses the corrupting power of money, but few grasp the power of secrecy to subvert the

public process.

An ancient Latin saying on secrecy is: "Amphora sub veste numquam portatur honeste." It means "No one carries a jug under his coat for an honest reason."

Secrecy is fatal to accountability —and accountability is the central ingredient of free self-government. Citizens cannot call public officials to account if citizens are denied the information which would make that possible.

Citizens associate secrecy with national security, but most government secrecy has nothing to do with national security. It covers day-to-day decision making on agriculture, energy, commerce, taxation, and hundreds of other matters that bureaucrats and politicians prefer to settle behind closed doors.

When the new Congress met in early 1973, the House of Representatives voted to open their meetings. At the last count, 88 percent of their bill-drafting sessions are now open. This is a profound and revolutionary change in their way of doing business. And one long overdue.

Special interests and their role in government are linked to the money and secrecy issues. I am always amused when I hear social critics say that our national life is controlled by a few people behind the scenes. The error is in the word *few*. I've been behind the scenes, and special interests are milling about like people in Times Square on New Year's Eve. There are the maritime interests and the teamsters and the farmers and the bankers and the doctors and the municipal workers and the textile manufacturers and so on and on and on.

The problem isn't that such interests exist or that they seek to influence policy. It is their constitutional right to do so. The prob-

lem is that too often the special interests operate secretly and use money in ways which corrupt the public process and that too often the public interest is not adequately represented along with all the special interests.

And all of us, no matter what our special interests, should want to see the public interest adequately represented. If the nation fails, we all fail.

I can't emphasize strongly enough that the money and secrecy reforms will bring profound and far-reaching reforms in the patterns of government. The climate is right for change—and change is occurring. In the past 18 months, 30 states have passed major reform legislation on one or more of the Common Cause open-government measures.

State legislators are sensing a grassroots mood in the American people. Even Congress is beginning to sense the mood.

Common Cause intends to reestablish the link of accountability between the citizen and his elected representatives. Today, good citizens leave the voting booth, pat themselves on the back for doing their civic duty, and then go home and forget the whole thing. But the political machines don't forget it. And the behind-the-scenes operators don't forget it. Representatives of all the special interests are in their offices the morning after election day, figuring out the next step. Politics is the only game where the real action begins after the public has filed out of the stadium.

I want to say two things to you who are associated with the activity I care the most about—education.

First of all, take heart. You, as individuals, take heart.

There are concrete, practical things to be done to restore in-

tegrity to our government, and if we have the guts and the good sense, we can do them. Citizens can do them. People. You and I.

Second, tell your students that they have a chance. That's all humans have ever had since the dawn of history. But it's an exciting chance. And tell them that you and I and a lot of others are working—through citizen action—to make it a good chance.

Citizen action is good for the democratic process. It is also good that citizens are doing the acting because it gives them a feeling that many haven't had for a long time: the feeling that America is their venture, theirs to preserve.

Ultimately, the greatest danger facing this country is the ever-multiplying numbers of Americans who feel *no* sense of responsibility for the future of this society, *no* concern for its continued vitality, *no* obligation to lend themselves to *any* worthy common purpose.

Motivation and morale are everything in worker productivity, in solving community problems, in preserving the nation's vitality. In my judgment, citizens who do not bother to vote, people who litter the streets and parks, and workers who are satisfied with low productivity and careless workmanship are all suffering from the same malady. They no longer believe that America is *their* venture.

If we want citizens characterized by moral and high motivation, we had better combat the skepticism and loss of confidence that are undermining the citizens' sense of responsibility. We had better give the citizen a role in the great tasks of self-government. That, in my judgment, is essential if we are to save this nation from slow death by demoralization. The hour is late.

It is possible to be foolishly sentimental about "the people."

But one unsentimental and inescapable fact about human society —any human society—is that the vitality and coherence of a society begins and ends with motivated people and the ideas they have in their heads of what their society is and ought to be. That's where it begins, and if it ends, that's where it ends. It was true in ancient Greece. It was true in Elizabethan England. And it is doubly true in any society that calls itself a democracy.

Every year millions of American citizens come to Washington and visit our national shrines—the White House, the Capitol, the monuments to our Presidents. But the spirit of the nation is not in those physical structures. It is in the hearts and minds of the citizens who come to look at the structures. If they stop believing, if they lose faith, if they stop caring, the monuments and the great buildings will be meaningless piles of stone.

No matter how accomplished our public servants are, the inner mystery of democracy will always involve that old and good idea: "We, the people." □

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